
TITLE 329 SOLID WASTE MANAGEMENT BOARD

FIRST NOTICE OF COMMENT PERIOD

LSA Document #11-454

DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING FINANCIAL ASSURANCE IN [329 IAC 10](#)**PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on amendments to rules at [329 IAC 10-12-2](#) and [329 IAC 10-39](#) concerning changes and updates to the financial assurance rules for solid waste land disposal facilities.

IDEM seeks comment on the affected citations listed and any other provisions of Title 329 that may be affected by this rulemaking.

CITATIONS AFFECTED: [329 IAC 10-12-2](#); [329 IAC 10-39](#).

AUTHORITY: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#).

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING**Basic Purpose and Background**

The changes will amend current language to be more consistent with hazardous waste financial assurance mechanisms and will clarify and specify the language required in the financial assurance instruments. The intent is to update the existing rule at [329 IAC 10-39](#) so that it is current with EPA Financial Assurance Rule guidelines. In some instances, the language in the federal hazardous waste rules was used in formulating the proposed state rule changes. The rulemaking would require restricted waste sites that are using the financial test, except utility owners and operators, to meet both the financial test and the acceptable bond rating under [329 IAC 10-39-2\(a\)\(5\)](#). The rulemaking would include a requirement to update the post-closure funds annually after post-closure is initiated. This is a federal requirement. Corrections will also be made in [329 IAC 10-12-2\(a\)](#) and [329 IAC 10-12-2\(b\)](#) to the citation [IC 13-15-8](#) that should be [IC 13-15-4](#).

Alternatives To Be Considered Within the Rulemaking

Alternative 1. Amending the financial assurance mechanisms to be consistent with federal hazardous waste financial assurance requirements. Require restricted waste sites that are using the financial test, except utility owners and operators, to meet all the tests under [329 IAC 10-39-2\(a\)\(5\)](#). Require facilities to update the post-closure funds annually after post-closure is initiated.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? Yes, but the language is from the hazardous waste financial assurance standards.
- Is this alternative imposed by federal law or is there a comparable federal law? This alternative is not imposed by federal law for solid waste in 40 CFR 258, but 40 CFR 260 imposes such requirements for hazardous waste facilities. It is a "state-only" requirement.
- If it is a federal requirement, is it different from federal law? Yes.
- If it is different, describe the differences. This rulemaking will require both a financial test and an acceptable bond rating instead of just one of those conditions.
- Corrections will be made in [329 IAC 10-12-2\(a\)](#) and [329 IAC 10-12-2\(b\)](#) to the citation [IC 13-15-8](#), which should be [IC 13-15-4](#).

Alternative 2. Corrections will be made in [329 IAC 10-12-2\(a\)](#) and [329 IAC 10-12-2\(b\)](#) to the citation [IC 13-15-8](#), which should be [IC 13-15-4](#).

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No.
- Is this alternative imposed by federal law or is there a comparable federal law? No.
- If it is a federal requirement, is it different from federal law? No.
- If it is different, describe the differences. Not applicable.

Applicable Federal Law

The applicable federal law is 40 CFR 258, Subpart G-Financial Assurance Criteria.

Potential Fiscal Impact

Potential Fiscal Impact of Alternative 1. These amendments may have a fiscal impact if a restricted waste site currently uses the financial test mechanism for financial assurance for the facility, but, under this rule, could not pass both financial test requirements and would have to pay the cost for a different financial assurance mechanism. IDEM is unsure of the additional cost in this circumstance and is soliciting information from potentially affected facilities.

Potential Fiscal Impact of Alternative 2. These changes will have no additional fiscal impact.

Small Business Assistance Information

IDEM established a compliance and technical assistance (CTAP) program under [IC 13-28-3](#). The program

provides assistance to small businesses and information regarding compliance with environmental regulations. In accordance with [IC 13-28-3](#) and [IC 13-28-5](#), there is a small business assistance program ombudsman to provide a point of contact for small businesses affected by environmental regulations. Information on the CTAP program, the monthly CTAP newsletter, and other resources available can be found at:

www.in.gov/idem/ctap

Small businesses affected by this rulemaking may contact the Small Business Regulatory Coordinator:

Alison Beumer
IDEM Small Business Regulatory Coordinator
MC 60-04 IGCS W041
100 North Senate Avenue
Indianapolis, IN 46204-2251
(317) 232-8172 or (800) 988-7901
ctap@idem.in.gov

For purposes of [IC 4-22-2-28.1](#), the Small Business Ombudsman designated by [IC 5-28-17-5](#) is:

Ryan Asberry
Indiana Economic Development Corporation
One North Capitol, Suite 700
Indianapolis, IN 46204
(317) 232-8962
smallbizombudsman@iedc.in.gov

Resources available to regulated entities through the small business ombudsman include the ombudsman's duties stated in [IC 5-28-17-5](#), specifically [IC 5-28-17-5\(9\)](#), investigating and attempting to resolve any matter regarding compliance by a small business with a law, rule, or policy administered by a state agency, either as a party to a proceeding or as a mediator.

The Small Business Assistance Program Ombudsman is:

Brad Baughn
IDEM Small Business Assistance Program Ombudsman
MC 50-01 IGCN 1301
100 North Senate Avenue
Indianapolis, IN 46204-2251
(317) 234-3386 or (800) 451-6027
bbaughn@idem.in.gov

Public Participation and Workgroup Information

At this time, no workgroup is planned for the rulemaking. If you feel that a workgroup or other informal discussion on the rule is appropriate, please contact Lynn West, Rules Development Branch, Office of Legal Counsel at (317) 232-3593 or (800) 451-6027 (in Indiana).

STATUTORY AND REGULATORY REQUIREMENTS

[IC 13-14-8-4](#) requires the board to consider the following factors in promulgating rules:

- (1) All existing physical conditions and the character of the area affected.
- (2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.
- (3) Zoning classifications.
- (4) The nature of the existing air quality or existing water quality, as the case may be.
- (5) Technical feasibility, including the quality conditions that could reasonably be achieved through coordinated control of all factors affecting the quality.
- (6) Economic reasonableness of measuring or reducing any particular type of pollution.
- (7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to human, plant, animal, or aquatic life or to the reasonable enjoyment of life and property.

REQUEST FOR PUBLIC COMMENTS

At this time, IDEM solicits the following:

- (1) The submission of alternative ways to achieve the purpose of the rule.
- (2) The submission of suggestions for the development of draft rule language.

Mailed comments should be addressed to:

LSA Doc. #11-454 (Amendment to Financial Assurance)
Janet Pittman
Rules Development Branch
Office of Legal Counsel
Indiana Department of Environmental Management
100 North Senate Avenue

MC 65-45

Indianapolis, IN 46204-2251

Hand delivered comments will be accepted by the receptionist on duty at the thirteenth floor east reception desk, Indiana Government Center North, 100 North Senate Avenue, Indianapolis, Indiana.

Comments may be submitted by facsimile at the IDEM fax number: (317) 233-5970, Monday through Friday, between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Rules Development Section at (317) 232-8922.

COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by September 16, 2011.

Additional information regarding this action may be obtained from Lynn West, Rules Development Branch, Office of Legal Counsel, (317) 232-3593 or (800) 451-6027 (in Indiana).

Nancy King, Chief
Rules Development Branch
Office of Legal Counsel

Posted: 08/17/2011 by Legislative Services Agency

An [html](#) version of this document.